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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/172047

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 15, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on March 22, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly modified a request from [REDACTED] to provide personal care worker (PCW) services to the Petitioner.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

||

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: OIG by letter

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.

2. On November 5, 2015, [REDACTED] ([REDACTED]) completed a Personal Care Screening Tool (PCST) and determined the Petitioner needed assistance with his activities of daily living as follows:
  - Bathing – Level D
  - Dressing Upper Body – Level D
  - Dressing Upper Body – Level D (with assistance for placement of a wrist brace)
  - Grooming – Level E
  - Eating – Level B
  - Mobility – Level D
  - Toileting – Level D
  - Transferring – Level D
  - Medically Oriented Tasks – Level A (independent with medications)

(Exhibit 4, pgs. 8-14)
3. On December 10, 2015, [REDACTED] submitted, on behalf of Petitioner, a request for prior authorization of 133 units / 33.25 hours per week of PCW services for 53 weeks with an additional 28 units / 7 hours per week travel time for the PCW. This is at a cost of \$41,599.00. (Exhibit 4, pgs. 4-5)
4. On November 12, 2014, the Department of Health Services (DHS) sent the Petitioner and [REDACTED] notices indicating that the request for services was modified. At that time, DHS approved 12.5 hours per week of PCW services and 7 hours per week of travel time for the PCW. (Exhibit 4, pgs. 54-59)
5. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 15, 2016. (Exhibit 1)
6. Petitioner lives alone. (Exhibit 4, pg. 9)
7. Petitioner is 33 years old and is noted to have chronic pain and chronic anxiety. (Exhibit 4, pg. 29)
8. Petitioner's PCW typically comes in twice per day, once in the morning for a few hours and then in the evening from 5:30 to 8:30. (Testimony of Carmen Garcia, Petitioner's PCW)

### **DISCUSSION**

Personal Care Services are a covered service by Medicaid. They are defined as, "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care." *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under *Wis. Admin. Code DHS §107.11(2)*, that are needed to treat a recipient's medical condition or to maintain a recipient's health. *Wis. Admin. Code DHS §107.112(b)*

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;

2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
  6. Is not duplicative with respect to other services being provided to the recipient;
  7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
  8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
  9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

██████████, on behalf of Petitioner, requested 33.25 hours per week of active PCW service hours and seven hours per week of travel time for the PCW. According to the letter from the Department of Health Services, Office of the Inspector General, DHS approved the 7 hours per week of travel time for the PCW, but modified the request for active PCW service hours, reducing it from 33.25 to 12.5 hours per week.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, ██████████, completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located, under topic number 3165 on the Forward Health website:

<https://www.forwardhealth.wi.gov/WIPortal/Subsystem/KW/Display.aspx>

In general, seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs), if any, are examined.

The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table. The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165*. A copy of the table was included as attachment 4 of the OIG letter, Exhibit 3.

The letter from the Office of the Inspector General indicated that DHS allowed the following times for the following activities:

1. Bathing: 30 minutes per day x 7 days	210 minutes per week
2. Dressing Upper Body:	zero minutes
3. Dressing Lower Body: 10 minutes per day x 7 days	70 minutes per week
4. Applying wrist brace: 10 minutes per day x 7 days	70 minutes per week
5. Grooming: 30 minutes per day x 7 days	210 minutes per week
6. Eating: zero minutes	zero minutes
7. Mobility: zero minutes	zero minutes
8. Toileting: zero minutes	zero minutes
9. Transfers: zero minutes	zero minutes
10. MOTs: zero minutes	zero minutes
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Total:	560 minutes week

#### Bathing

For bathing, DHS allowed the maximum amount of time permitted by the Personal Care Activity Time Allocation Table: 30 minutes per day x 7 days a week = 210 minutes per week.

Petitioner's PCW indicated that the Petitioner needs an additional 15 to 20 minutes to complete the task of bathing.

“‘Bathing’ means cleansing all surfaces of the body and bathing includes assistance with changing clothing, getting in and out of the tub or shower; wetting, soaping and rinsing skin; shampooing hair, drying body, applying lotion to the skin, applying deodorant and routine catheter care.” The task of

bathing does not include time for other things, like allowing the patient to soak in the tub. See page 4 of the PCST instructions, which may be viewed on-line at:

<http://www.dhs.wisconsin.gov/forms/F1/F11133a.pdf>

It is unclear from the documentation in the record why the Petitioner would need more than 30 minutes to complete the task of bathing, as it is described above. A clinical note from December 30, 2015, indicates that the Petitioner did not exhibit signs of distress, that he moved reasonably well, and that he had reasonable control over his chronic pain, without side effects. (See Exhibit 4, pg. 44) Prior notes from October and November 2015 also indicate that Petitioner's chronic pain was reasonably controlled. (See Exhibit 4, pgs. 46 and 48) As such, it is found that DHS correctly allowed 30 minutes for the task of bathing.

#### Dressing

Per page 4 of the PCST instructions, one episode of dressing is included in the 30 minutes allowed for bathing.

DHS allowed the maximum amount of time permitted for the second episode of dressing the lower body: 10 minutes per day x 7 days a week = 70 minutes per week.

The Petitioner's PCW indicated that this was sometimes adequate, but that on his worst days, Petitioner needed at least 15 minutes to put on his pants, socks and shoes. Again, it is not clear from the current medical documentation why the Petitioner needs an extra five minutes a day to get his pants on. As such, DHS's determination will not be changed.

DHS did not allow time for upper body dressing, because a Long Term Care Functional Screen that was completed on January 4, 2016, indicated that the Petitioner is able to dress his upper body. (See Exhibit 3, attachment 4, pg. 4) Petitioner's PCW indicated that the Petitioner is able to put on a buttoned shirt.

Based upon the foregoing, it is found that DHS allowed appropriate time for the task of dressing.

It should be noted that DHS allowed 70 minutes per week for assistance with placing a wrist brace. Petitioner's PCW indicated that this was appropriate.

#### Grooming

DHS allowed the maximum time allowed by the Personal Care Activity Time Allocation Table for grooming, 30 minutes per day x 7 days = 210 minutes per week. Petitioner's PCW indicated that this is sufficient.

#### Eating

The Petitioner does not dispute the fact that he is able to feed himself. As such, it is found that DHS correctly denied PCW time for this task.

#### Mobility

The Petitioner's PCW testified that the Petitioner is able to get around his home safely, if he uses his cane, or on his worst days, if he uses his walker. As such, it is found that DHS correctly denied PCW assistance with mobility.

Toileting

The Petitioner's PCW testified that the Petitioner needs assistance with toileting, because the Petitioner gets dizzy and needs help getting his pants up and down. However, the Long Term Care Functional Screen Report that was completed in January 2016, indicates that the Petitioner is, "independent with this task without the use of adaptive aids. Customer verbalized is [sic] ability to locate the bathroom, transfer on and off the toilet, [sic] he also indicated that he can clean self, and adjust clothing". (See Exhibit 3, attachment 4, pg. 4) Indeed, he must do these things for himself during the middle of the day when his PCW is not present. Accordingly, it is found that DHS correctly denied PCW assistance for toileting.

Transfers

Petitioner's PCW agreed that the Petitioner is able to get out of bed, or move from a chair without assistance.

Medically Oriented Tasks

Under Medically Oriented Tasks (MOTs), the PCST indicated that the Petitioner is independent with his medications and did not need assistance with medically oriented tasks and the physician orders do not include assistance with any medically oriented tasks.

According to page 1 of the PCST instructions, the prior authorization request is limited by what is ordered by a physician in the plan of care. This instruction is based upon Wis. Admin. Code §DHS 107.112(1)(a) which states that personal care services, "shall be provided upon written orders of a physician...according to a written plan of care". In addition, Wis. Admin. Code §DHS 107.112(4)(c) specifically lists "Personal care services not documented in the plan of care" as a non-covered service.

Because the physician's order, in the Home Health Certification and Plan of Care submitted by [REDACTED] contains no order for PCW services related to MOTs, no PCW time can be approved for this task.

Total Time Needed for ADLs and MOTs

Based upon the foregoing, the actual time needed to completed Petitioner's ADLs and MOTs is as follows:

1. Bathing: 30 minutes per day x 7 days	210 minutes per week
2. Dressing Upper Body:	zero minutes
3. Dressing Lower Body: 10 minutes per day x 7 days	70 minutes per week
4. Applying wrist brace: 10 minutes per day x 7 days	70 minutes per week
5. Grooming: 30 minutes per day x 7 days	210 minutes per week
6. Eating: zero minutes	zero minutes
7. Mobility: zero minutes	zero minutes
8. Toileting: zero minutes	zero minutes
9. Transfers: zero minutes	zero minutes
10. MOTs: zero minutes	zero minutes
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Total:	560 minutes week

Incidental Tasks

Per the on-line Provider Handbook, topic 3167, for individuals who live alone, time equal to 1/3 of the time it actually takes to complete Activities of Daily Living (ADLs) may be allocated for incidental cares

such as changing and laundering linens, light cleaning in areas used during personal care activities, eye glass care and hearing aids, meal preparation, food purchasing and meal service.

One third of 560 minutes is 186.67 minutes.

Thus, the total time allowed for PCW services works out to be:

560 minutes per week for ALDs  
+186.67 minutes per week for incidental activities

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746.67 minutes per week

746.67 minutes ÷ 15 minutes per unit = 49.78 units per week rounded to 50 units per week  
50 units per week = 12.5 hours per week of personal care services.

DHS approved 12.5 hours per week of PCW services. As such, it correctly modified [REDACTED]'s prior authorization request.

Petitioner's PCW expressed some concerns that Petitioner's needs for assistance might be increasing, because he will likely be having surgery. If Petitioner's condition changes or he obtains current medical documentation showing an increased need for PCW services, [REDACTED] can, at any time, submit a NEW prior authorization request, seeking additional services.

**I note to the Petitioner that her provider, [REDACTED], will not receive a copy of this Decision. Petitioner might wish to provide a copy to [REDACTED]**

### **CONCLUSIONS OF LAW**

DHS correctly modified a request from [REDACTED] to provide personal care worker (PCW) services to the Petitioner.

**THEREFORE, it is**

**ORDERED**

The petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

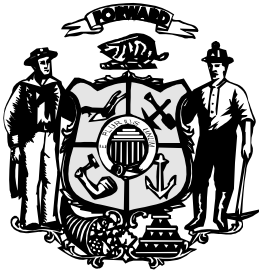
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 18th day of April, 2016

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals





**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 18, 2016.

Division of Health Care Access and Accountability